

#### § 48.4218-4

#### 26 CFR Ch. I (4-1-04 Edition)

subject to tax, liability for tax is not incurred on such sale or lease.

[T.D. 6687, 28 FR 11781, Nov. 5, 1963]

#### § 48.4218-4 Use in further manufacture.

For purposes of section 4218 and § 48.4218-1, an article is used as material in the manufacture or production of, or as a component part of, another article, if it is incorporated in, or is a part or accessory of, the other article. Lubricating oil in the crankcase of a new truck is an example of a taxable article use as material in the manufacture or production of, or as a component part of, another article. In addition, an article (other than gasoline used as a fuel) is considered to be used as material in the manufacture of another article if it is partly or entirely consumed in testing such other article; for example, shells or cartridges used in testing new firearms. Similarly, if an article is partly or wholly consumed in quality testing a production run of like articles (as, for example, an automotive part destroyed in stress testing) such article is also considered to have been used as material in the manufacture of another article. However, if a taxable article that has been used tax free and only partly consumed in testing is later sold, or put to a taxable use, by the manufacturer, tax attaches to such sale or use. An article that is consumed in the manufacturing process other than in testing, so that it is not a physical part of the manufactured article, is not used as material in the manufacture or production of, or as a component part of, such other article. Thus, lubricating oil consumed in operating plant machinery in the course of the manufacture of automobile truck chassis is not used as material in the manufacture or production of, or as a component part of, the truck chassis.

[T.D. 6687, 28 FR 11781, Nov. 5, 1963, as amended by T.D. 7536, 43 FR 13521, Mar. 31, 1978]

#### § 48.4218-5 Computation of tax.

(a) *Tax based on price.* Except as provided in paragraph (d) of this section, tax liability incurred on the use of an article shall be computed on the price at which such or similar articles are

sold in the ordinary course of trade by manufacturers, producers, or importers thereof and in the absence of special arrangements. For additional provisions applicable in computing the tax in the case of the use of an article by a manufacturer and producer who purchased the article free of tax under section 4221(a)(1) for use by him in further manufacture, see section 423(b) and the regulations thereunder.

(b) *Articles regularly sold by manufacturer.* If the manufacturer, producer, or importer of an article regularly sells such articles at wholesale in arm's length transactions, tax liability on his use of any such article shall be computed on his lowest established wholesale price for such articles in effect at the time of the taxable use. In establishing such price, there shall be included and excluded, as applicable, the charges and readjustments specified in sections 4216(a), 4216(f), and 6416(b)(1), as in effect at the time tax liability on the use of the article is incurred, and the regulations thereunder contained in this subpart and Subpart O. If the manufacturer, producer, or importer of an article does not regularly sell such articles at wholesale in arm's length transactions, a constructive price on which the use tax shall be computed will be determined by the Commissioner. This price will be established after considering the selling practices and price structures of manufacturers, producers, and importers of similar articles.

(c) *Articles governed by section 4218(a) used in manufacture of nontaxable combination articles.* If the manufacturer, producer, or importer of an article to which section 4218(a) applies does not regularly sell such article separately but uses it as material in the manufacture or production of, or as a component part of, a nontaxable combination article consisting of a taxable and nontaxable article, liability for tax on his use shall be computed on the constructive price of the taxable article at the time of use. To determine the constructive price of the taxable article in such case, the combination article is considered to be composed of (1) parts used exclusively in the functioning of the taxable article in the combination, (2)

parts used exclusively in the functioning of the nontaxable article in the combination, and (3) parts, called common parts, which serve a dual function in connection with the parts in both subparagraphs (1) and (2) of this paragraph. The ratio which the cost of the parts in subparagraph (1) of this paragraph bears to the sum of the cost of such parts and the parts in subparagraph (2) of this paragraph is applied to the lowest established wholesale price for which like combination articles are at the time of the taxable use being sold by the manufacturer or producer in the ordinary course of trade. The resulting amount is the constructive sale price for the taxable article on which tax is to be computed. The cost of the common parts is allocable to the parts in subparagraphs (1) and (2) of this paragraph in the same ratio, and, therefore, need not be taken into account in the computation since the inclusion and allocation of the cost of such parts in the determination would not result in a different ratio. In determining the lowest established wholesale price for the combination article, there shall be included and excluded, as applicable, the charges and readjustments specified in sections 4216(a), 4216(f), and 6416(b)(1), as in effect at the time tax liability on the use of the taxable article is incurred, and the regulations thereunder contained in this subpart and Subpart O of this part. The tax applicable to the use of the article for which a constructive sale price has been computed is not affected by any charges or readjustments of the price for which the nontaxable combination article is sold, whether by reason of the return or repossession of the nontaxable article or its covering or container, or by a bona fide discount, rebate, allowance, or other factor. The application of this subparagraph may be illustrated by the following example:

*Example.* A manufacturer of a nontaxable washer-drier combination produces and uses an electric clothes drier taxable under section 4121 in the manufacture of the combination article. The lowest established wholesale price of the manufacturer for the washer-drier combination at the time of the taxable use is \$150 with respect to identical combinations after including and excluding applicable charges and readjustments. The

manufacturer does not regularly sell such drier separately. In the manufacture of the washer-drier the two units are integrated to the extent that certain component parts function both in the operation of the washer and of the drier. The parts used exclusively in the operation of the washer cost \$30 and those used exclusively in the operation of the drier cost \$20. The taxable cost ratio in this instance is 20/50, or 40 percent. Applying 40 percent to the manufacturer's lowest established wholesale price of \$150 for the washer-drier results in \$60 as the constructive price for the taxable article in the combination at the time tax liability is incurred. No additional charges or readjustments in connection with, or subsequent to, the sale of the washer-drier combination may affect the tax liability incurred at the time of use.

(d) *Tax based on weight or volume.* Where liability for tax is incurred on the use of an article subject, if sold, to a tax based on:

- (1) The weight of the article (such as a tire), or
  - (2) The volume of the article (such as gasoline or lubricating oil),
- the tax due shall be computed on the basis which would be applicable if such article were sold.

[T.D. 6687, 28 FR 11781, Nov. 5, 1963]

#### APPLICATION OF TAX IN CASE OF SALES BY OTHER THAN MANUFACTURER OR IMPORTER

#### § 48.4219-1 Sales of taxable articles by a person other than the manufacturer, producer, or importer.

(a) *General rule.* If the title to, or ownership of, an article taxable under Chapter 32 of the Code is transferred from the manufacturer, producer, or importer thereof, and, under the law, no tax attaches to such transfer, the subsequent sale, lease, or use of such article by the transferee is subject to tax to the same extent and in the same manner as if such transferee were the manufacturer, producer, or importer of the article. The following examples illustrate this rule:

- (1) The surviving spouse, child or children, executors or administrators, or other legal representatives, as the case may be, of a deceased manufacturer, producer, or importer of taxable articles, incur liability for tax on all such articles sold by them.